

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA
ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

Case No. 4:22-MD-03047-YGR

MDL No. 3047

This Document Relates to:

ALL ACTIONS

**JOINT LETTER BRIEF REGARDING
PLAINTIFFS' MOTION TO COMPEL
TIKTOK AND YOUTUBE TO PRODUCE
THE CUSTODIAL FILES OF TIKTOK
WITNESS SAMANTHA KERSUL AND
YOUTUBE WITNESS TOM SAFFELL,
BOTH LISTED ON DEFENDANTS'
SEPTEMBER 24 PRELIMINARY TRIAL
WITNESS LIST**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Dear Magistrate Judge Kang:

In accordance with the Court's Standing Order for Discovery in Civil Cases, Plaintiffs and the YouTube and TikTok Defendants respectfully submit this joint letter brief addressing their ongoing dispute regarding Plaintiffs' entitlement to the custodial files of two witnesses listed on Defendants' September 24 Preliminary Trial Witness List: TikTok witness Samantha Kersul and YouTube witness Tom Saffell.

Pursuant to the Discovery Standing Order and Civil Local Rule 37-1, the Parties attest that they met and conferred by video conference, email, and correspondence before filing this brief. On October 10, 2025, lead trial counsel for the Parties involved in the dispute attended a final conferral. Because all lead counsel are not located in the geographic region of the Northern District of California or otherwise located within 100 miles of each other, they met via videoconference. Lead trial counsel have concluded that no agreement or further negotiated resolution can be reached.

Dated: October 13, 2025

Respectfully submitted,

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ATTESTATION

We hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Pursuant to Section H of this Court's Standing Order in Civil Cases, lead counsel for Plaintiffs and the TikTok and YouTube Defendants attended the final meet-and-confer on October 10, 2025, which was conducted via a phone, as lead counsel were in attendance from locations across the country more than 100 miles apart.

Dated: October 13, 2025

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Plaintiffs' Position:

Defendants just disclosed two witnesses on their September 24 Preliminary Trial Witness List - one TikTok Witness, Samantha Kersul, and one YouTube witness, Tom Saffell - who were not previously identified on the Rule 26 Disclosures, were not custodians, and were not deposed in their personal capacity. Rather, both witnesses were only deposed as a Rule 30(b)(6) designee. YouTube and TikTok have confirmed that these witnesses will testify at trial within the scope of their respective 30(b)(6) topics. For that reason, Plaintiffs are not seeking to depose these witnesses in their personal capacity. Nevertheless, Plaintiffs do seek the witnesses' custodial files.¹ "The theory of disclosure under the Federal Rules of Civil Procedure is to encourage parties try cases on the merits, not by surprise, and not by ambush." *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 862 (9th Cir. 2014).

Ms. Kersul served as TikTok's Rule 30(b)(6) corporate designee on key topics in the School District cases. Her deposition began on July 30, 2025, was suspended due to illness, and completed on August 20, 2025. TikTok now refuses to produce her custodial file, arguing that Plaintiffs could have requested it during discovery and that production is unnecessary because she was deposed.

Mr. Saffell served as YouTube's Rule 30(b)(6) corporate designee on certain age verification topics. He was identified as the designee on those topics on the eve of his April 1, 2025 deposition. YouTube is refusing to produce his custodial file, arguing that Plaintiffs could have requested it during discovery, that YouTube would be unduly burdened at this late time, and that limiting the scope of the testimony is sufficient.

These arguments fail. *First*, neither TikTok nor YouTube ever disclosed these two witnesses in their Rule 26(a) disclosures or in any written discovery responses, including interrogatories requiring them to identify witnesses with relevant knowledge and their roles. Plaintiffs therefore had no reason to anticipate they possessed unique information or would be a trial witness. In fact, Plaintiffs did not learn of Ms. Kersul until days before her 30(b)(6) deposition, when TikTok produced her CV. And Plaintiffs did not learn of Mr. Saffell until the eve of his 30(b)(6) deposition on April 1, 2025 when his CV was produced. Plaintiffs acted diligently throughout, particularly given the TikTok Defendants repeated delays in custodial collections and prior extensions of discovery deadlines granted at their request.

Second, now that TikTok and YouTube have designated these two witnesses as live trial witnesses—even with their testimony limited to the same Rule 30(b)(6) topics—Plaintiffs are entitled to fully and effectively cross-examine them using their complete custodial record. A 30(b)(6) deposition captures corporate testimony; trial cross-examination requires the witness's own e-mails and documents to test accuracy, completeness, and credibility.

Plaintiffs ask this Court to adopt the reasoning as set forth in its April 4, 2025 discovery ruling in this case. There, YouTube disclosed two new witnesses in their amended Rule 26 disclosures. Plaintiffs requested, and this Court granted, their custodial files. This court explained:

YouTube's addition of these two individuals to its Amended Initial Disclosures is an express representation that they each are likely to have knowledge of information to support

¹ YouTube's representation that the parties agreed that limiting the testimony would obviate the need for their custodial file is not accurate. There was no such agreement.

1 YouTube's defenses. Certainly, in the briefing on this issue, YouTube does not disclaim any
 2 intention to rely on either witness's testimony to support its defenses. Thus, the flaw in
 3 YouTube's argument is that, while YouTube may be willing to forego reliance on any
 4 documents in the custodial files of either of these two witnesses, the failure to produce the files
 5 deprives Plaintiffs of the opportunity to determine whether there are documents in those
 6 custodial files which substantively contradict, undercut, rebut, or merely even weaken
 7 YouTube's defenses.

8 *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, No. 22-
 9 MD-03047-YGR (PHK), 2025 WL 1009362 (N.D. Cal. Apr. 4, 2025).

10 The same logic applies here. The addition of these two witnesses on Defendants' Preliminary
 11 Trial Witness List is an express representation that they each are likely to have knowledge of
 12 information to support TikTok's and YouTube's defenses. And TikTok's and YouTube's refusal to
 13 produce the custodial files would deny Plaintiffs the ability to test and impeach Ms. Kersul's and Mr.
 14 Saffell's testimony before the jury.

15 The Ninth Circuit has recognized that due process requires a "full and fair hearing," including
 16 a reasonable opportunity "to cross-examine witnesses." *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th
 17 Cir. 2020); *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). To deny the custodial file is to deny
 18 that fundamental right. The parties have already agreed on search terms, and there is ample time
 19 before trial to run those searches. Production would impose minimal burden on TikTok and YouTube,
 20 but denying it would severely prejudice Plaintiffs, who would be deprived of the tools necessary to
 21 confront TikTok's and YouTube's own witness before the jury.

22 *Third*, Plaintiffs seek nothing more than what the parties have already agreed to provide. This
 23 request is consistent with the Parties' Joint Stipulation to Modify Pretrial Schedule and consistent
 24 with the principles articulated in CMO No. 27, which expressly allows for targeted supplemental
 25 discovery to ensure adequate trial preparation. (Dkt. 2256). The School District Plaintiffs have
 26 already exceeded their obligations—producing seven newly identified witnesses for 4.5-hour
 27 depositions and, although not required, voluntarily producing those witnesses' custodial files.
 28 Plaintiffs simply ask that TikTok and YouTube be held to the same standard. TikTok and YouTube
 should not demand greater transparency from Plaintiffs while withholding comparable materials for
 its own trial witness.²

Fourth, Plaintiffs' agreement not to re-depose Ms. Kersul or Mr. Saffell was a pragmatic
 choice to avoid duplication—not a waiver of the right to obtain documents essential for cross-
 examination. Document discovery and deposition testimony serve different functions. *See In re*
Cathode Ray Tube (Antitrust) Litig., 2014 WL 806826 (N.D. Cal. Feb. 27, 2014) (holding that prior
 deposition did not preclude limited follow-up discovery necessary to ensure "a fair evidentiary record

² TikTok's assertion that Plaintiff Irvington Public Schools ("IPS") "declined requests" for comparable
 custodial files is false. Defendants requested Ms. Lopez's custodial file in June. The parties promptly
 met and conferred, and Defendants (at IPS's request) agreed to provide a written proposal clarifying
 what they were seeking—*e.g.*, a full custodial file, new search terms, or relied-upon materials. Despite
 IPS's follow-up requests for same, Defendants never made a proposal. Thus, IPS never, at any time,
 "declined." Ms. Lopez's complete custodial file was produced on October 10, 2025.

1 for trial”). Defendants cannot simultaneously restrict testimony to corporate topics and convert the
2 30(b)(6) designation into a shield against meaningful scrutiny.

3 *Finally*, Defendants’ proportionality and burden objections miss the mark. The request covers
4 only two custodians and uses the same search terms and ESI protocols already applied, rendering any
5 burden minimal. Under Rule 26(b)(1), the modest effort required here is far eclipsed by the need for
6 a fair and complete record at trial. Further, Plaintiffs’ request for these files was made within two
7 weeks of receiving Defendants’ Trial Witness List – the same period of time the Plaintiffs requested
8 the custodial files of two witnesses after they were added to YouTube’s disclosures. That Defendants
9 chose to wait until after the close of discovery to disclose these additional witnesses is Defendants’
10 burden to bear.

11 For these reasons, Plaintiffs respectfully request that the Court order TikTok to produce Ms.
12 Kersul’s custodial file and YouTube to produce Mr. Saffell’s custodial file promptly to permit
13 adequate trial preparation and ensure an even playing field at trial.
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TikTok's Position. This Court should deny Plaintiffs' belated request to add Samantha Kersul as a document custodian, which comes after Plaintiffs served their first Rule 30(b)(6) deposition notice related to schools on February 7, 2025. Ms. Kersul was identified by the TikTok Defendants as the 30(b)(6) witness on these topics on July 28, 2025, and the deposition proceeded on July 30 and August 20. At no point did Plaintiffs seek Ms. Kersul's custodial file, despite knowing they wanted to take a 30(b)(6) deposition for at least 6 months. The TikTok Defendants have now included Ms. Kersul on their preliminary witness list, and at Plaintiffs' request, agreed that any testimony Ms. Kersul offers at trial would be limited to the scope of the topics on which she was designated and deposed. The TikTok Defendants have already produced more than 2.4 million documents, including tens of thousands of documents related to the topics that Ms. Kersul testified to at her deposition. Plaintiffs did not need her custodial file then, and they do not need it now. Plaintiffs' demand for Ms. Kersul's custodial files should be denied.

First, Plaintiffs' request is untimely. Fact discovery is closed and any remaining discovery this Court permits is to be limited to witnesses the parties did not previously disclose. As this Court recently made clear, "[f]act discovery must come to an end" so the parties can focus on preparing for trial. ECF No. 2110 at 9-10. Plaintiffs have not demonstrated good cause to justify new productions six months after the April 2025 close of discovery. *See* Fed. R. Civ. P. 26(b)(2)(C); Fed. R. Civ. P. 16(b)(4); *see also Johnson v. Nissan N.A.*, 2021 WL 4517714, at *1 (N.D. Cal. Feb. 8, 2021) (denying plaintiffs' request for certain discovery where they decided to wait until "just before" a deadline to request it, citing Rule 26).

The parties began discussing the scope of ESI custodians in Spring 2024, which consisted of detailed, extensive negotiations over the list of document custodians. During these negotiations and numerous meet and confers, Plaintiffs did not raise the idea of seeking to include the custodial file of Ms. Kersul (whose name appeared in numerous documents Plaintiffs had at the time) or to include a placeholder for the custodial files of potential 30(b)(6) witnesses identified in the future.

Even if Plaintiffs had raised the idea of including the custodial files of the TikTok Defendants' 30(b)(6) witnesses, Plaintiffs did not timely raise production of Ms. Kersul's custodial file, waiting months after she was identified. As noted above, they did not timely seek her custodial file after she was identified on July 28. And more pointedly, the TikTok Defendants served their preliminary witness list on September 24, 2025, which unsurprisingly identified Ms. Kersul since she had been deposed. Thereafter, the parties engaged in two separate meet and confers concerning witness lists. At no point in those discussions did Plaintiffs raise that they were seeking additional custodial files at all, much less that they may be seeking Ms. Kersul's file. The tenor of those conferrals was that if the TikTok Defendants agreed to limit Ms. Kersul's deposition to the scope of the 30(b)(6) topics on which she was deposed, no further discovery would be needed. Plaintiffs' attempt to shift the blame with misleading claims³ about purported delayed productions during discovery should not excuse their unexplained delay in identifying Ms. Kersul as a document custodian. Plaintiffs' untimely request is an about-face that this Court should not countenance. *See Johnson*, 2021 WL 4517714, at *1.

³ The facts do not support Plaintiffs' assertion that production delays inhibited Plaintiffs' ability to timely complete depositions. The TikTok Defendants have produced minimal numbers of new documents after April 5, 2025. In fact, Plaintiffs agreed that they would not use the fact that documents were produced after April 5, 2025 to later argue for an extension of any deadlines in the MDL or JCCP.

1 *Second*, Plaintiffs’ comparison of Ms. Kersul to the late identified Plaintiff witnesses does not
 2 constitute good cause to justify further untimely discovery. Ms. Kersul was deposed in this litigation,
 3 and Plaintiffs had ample opportunity to seek to include her as a document custodian if they thought
 4 it necessary. The TikTok Defendants agreed that Ms. Kersul’s testimony will be limited to the scope
 5 of the topics on which she was designated and deposed. As such, Plaintiffs’ claim that they need Ms.
 6 Kersul’s documents to cross examine her at trial is nonsensical. Plaintiffs are more than able to cross
 7 examine her about the topics on which she was deposed since they had ample opportunity to prepare
 8 for her deposition and to ask whatever questions they needed to ask at that deposition. By contrast,
 9 the 2 witnesses on Plaintiffs’ September 24 witness list whose custodial files have not yet been
 10 produced (Huitt in Tucson and Lopez in Irvington) have not been deposed in any capacity because
 11 Plaintiffs never identified them as Priority Witnesses who may testify at trial, Dkt. 1752, Defendants
 12 do not know the scope of their testimony, and there are no agreements limiting the scope of the
 13 testimony. And, when Defendants did request their custodial files—as was the case for Huitt during
 14 custodial file negotiations and Lopez after Defendants received her declaration in support of
 15 Plaintiffs’ expert reports—Plaintiffs declined requests to produce their full custodial files. Thus,
 16 Plaintiffs’ comparison does not justify their untimely request to obtain Ms. Kersul’s files.

17 **YouTube’s Position.** The Court should deny Plaintiffs’ belated demand for Tom Saffell’s
 18 custodial file. YouTube included Mr. Saffell as a “may call” witness on its preliminary witness list
 19 in the six bellwether SD cases, and at Plaintiffs’ request, agreed that any testimony Mr. Saffell offers
 20 at trial would be limited to the scope of the 30(b)(6) topics on which he was designated and on which
 21 Plaintiffs already deposed him. Plaintiffs represented on two meet and confers that YouTube’s
 22 agreement to so limit Mr. Saffell’s testimony would obviate the need for further discovery from
 23 him. Plaintiffs waited until October 9, after filing of the parties’ joint status report on this issue, to
 24 request Mr. Saffell’s file in contravention of their prior representations. Plaintiffs cannot show good
 25 cause to now demand his custodial file.

26 *First*, Plaintiffs’ request is untimely. YouTube disclosed Mr. Saffell on March 31, 2025 as
 27 its 30(b)(6) corporate representative on five topics related to accessing YouTube in a logged-out
 28 status, the reliability of a user’s declared age, and YouTube’s age assurance and age verification
 29 processes. Plaintiffs deposed him as a corporate representative on those topics on April 1, 2025
 30 without his personal custodial file. Plaintiffs’ belated claim that they need Mr. Saffell’s custodial file
 31 in order to “fully and effectively cross-examine” him on these topics is meritless. They did not claim
 32 to need YouTube’s corporate representative’s custodial files in advance of the deposition, nor did
 33 they request Mr. Saffell’s custodial file after he was disclosed as the deponent or at any time
 34 since. Most tellingly, Plaintiffs already have thousands of documents on age-related topics, including
 35 from multiple custodians in Mr. Saffell’s reporting chain and other YouTube employees, yet Plaintiffs
 36 did not question him about a single one of those documents during the deposition. Plaintiffs’ assertion
 37 is also belied by the fact that they do not have the custodial file of a similarly-situated Snap 30(b)(6)
 38 witness and have agreed not to seek it.

39 *Second*, production of Mr. Saffell’s custodial file at this late stage is not proportional to the
 40 needs of these cases because it is not relevant to the SD cases. SDs have no evidence that accessing
 41 YouTube in a logged-out state, or the alleged lack of adequate age verification or age assurance
 42 policies and practices, caused any student in any of the School Districts to become “addicted” to
 43 YouTube or caused him/her any mental health harm, much less that that harm caused the Districts to
 44 spend additional resources. *See, e.g.*, Dkt. 2288 at 14 (*Breathitt* MSJ). Nor does any District have
 45 any evidence that different or “better” access policies or practices would have prevented any of its

1 alleged injuries. *Id.*

2 Plaintiffs incorrectly assert that the Court's prior ruling requiring YouTube to produce
3 custodial files for two different witnesses disclosed in February 2025 entitles them to Mr. Saffell's
4 file. The circumstances here are fundamentally different. In granting Plaintiffs' prior motion, the
5 Court found that, unlike with Mr. Saffell, Plaintiffs timely sought within the discovery period the
6 custodial files of those witnesses and those witnesses had not previously been disclosed in any
7 capacity, and YouTube did not agree to limit their testimony, as it has done with Mr. Saffell.
8 Plaintiffs' other cited cases are asylum cases that have nothing to do with producing custodial files
and are irrelevant. In *Grigoryan*, asylum applicants were denied asylum on the basis of a report but
they "were not allowed to examine any of the documents or the individuals referred to in the report."
959 F.3d at 1235. *Colmenar* is even further afield: it is about a partisan Immigration Judge that tried
to intimidate the applicant and his counsel. 210 F.3d at 971.

9 Mr. Saffell is also distinguishable from the SDs' newly-added witnesses as discussed above
10 and because Plaintiffs intend to submit declarations from some or all of those witnesses in an attempt
11 to defeat Defendants' summary judgment motions. Thus, Plaintiffs seek to expressly rely on those
12 witnesses' testimony to prove their cases, whereas the issues about which Mr. Saffell would testify
13 are not relevant to the SD cases and should not be presented at trial.
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